

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EMIR BESKURT,

Petitioner,

V.

DEPARTMENT OF HOMELAND
SECURITY and ERIC H. HOLDER,

Respondents.

CASE NO. C11-1169 MJP

ORDER OF DISMISSAL

This matter comes before the Court on Petitioner’s objections to the Honorable Mary Alice Theiler, United States Magistrate Judge’s Report and Recommendation. (Dkt. No. 25.) Having reviewed Petitioner’s petition for writ of habeas corpus (Dkt. No. 1), the Report and Recommendation (Dkt. No. 24), Respondents’ response brief (Dkt. No. 26), Petitioner’s reply (Dkt. No. 27), and the remaining record, the Court ADOPTS the Report and Recommendation with on minor amendment as set forth below. The Court DISMISSES this action.

Petitioner's petition for writ of habeas corpus requests two forms of relief: (1) release from immigration custody, and (2) an order continuing the stay of removal during the pendency

1 of Petitioner' appeals and applications for relief. (Dkt. No. 24 at 1.) The Report and
2 Recommendation correctly explains that the REAL ID Act strips the Court of jurisdiction to
3 issue a stay of the removal proceedings. (Dkt. No. 24 at 5.) The Bureau of Immigration Appeals
4 or the Ninth Circuit is the proper forum for Petitioner's request for a stay of removal pending the
5 outcome of his motion to reopen and petition for review. Petitioner recognizes that the REAL ID
6 Act strips jurisdiction from this Court, but attempts to argue that the Act is unconstitutional.
7 (Dkt. No. 25 at 2-3.) This conjectural and largely unsupported argument lacks merit, and the
8 Court is not persuaded the Petitioner is unable to present his request for a stay or a petition for
9 writ of habeas corpus in full before a forum that actually has jurisdiction over such claims. The
10 Court DISMISSES the request for a stay and ADOPTS the Report and Recommendation in full
11 on this issue. The Court VACATES the previously issued temporary stay of removal. (Dkt. No.
12 3.)

13 Petitioner's request for release from custody is DENIED as MOOT because he has been
14 released from ICE custody. (See Dkt. No. 27 at 2.) The Court otherwise agrees with and
15 ADOPTS the Report and Recommendation's analysis of this claim, and affirms it as an
16 alternative reason to dismiss the request for release.

17 The clerk is ordered to provide copies of this order to all counsel and to Judge Theiler.

18 Dated this 22nd day of November, 2011.

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Marsha J. Pechman
United States District Judge